

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

DISTRICT OF COLUMBIA,

*Plaintiff,*

v.

FACEBOOK, INC.,

*Defendant.*

CIVIL ACTION NO.: 2018 CA 008715 B  
Judge Fern Flanagan Saddler  
Next Court Date: None Scheduled  
Event: N/A

**FACEBOOK, INC.'S RESPONSE TO THE DISTRICT OF COLUMBIA'S PRAECIPE  
RESPONDING TO FACEBOOK, INC.'S SUPPLEMENTAL AUTHORITY**

Facebook filed a one-paragraph Notice of Supplemental Authority to inform this Court about *Corley v. Vance*, 2019 WL 1382299 (S.D.N.Y. Mar. 27, 2019), the latest case in which a district court dismissed claims against Facebook for lack of personal jurisdiction. In response to this perfunctory filing, the District filed a 3-page response attacking both Facebook and its counsel, accusing us of engaging in a “pattern” of misrepresentations before this Court. District’s Praecipe at 1, 3 (Apr. 3, 2019). Respectfully, the District’s *ad hominem* attack on counsel’s credibility is completely unjustified. And it speaks volumes about the absence of legal authority to support the District’s arguments in opposition to Facebook’s motion to dismiss.

As Facebook explained, *Corley* is relevant for several reasons, most importantly because it rejects the argument, advanced by the District here, that a business license and an office in the jurisdiction are sufficient for personal jurisdiction—whether general *or* specific. 2019 WL 1382299, at \*7-9. Instead, as Facebook has argued, there can be no specific jurisdiction unless the in-forum contacts “give rise” to the claims in the case. *Daimler AG v. Bauman*, 571 U.S. 117, 127, 138 (2014); *Corley*, 2019 WL 1382299, at \*8. The District says “[h]ere, of course, Facebook’s employees involved in the alleged illegal conduct were located in D.C.” Praecipe at 2. But there is *no*

support in the record for that statement—certainly not in the District’s Complaint, but not even in the extra-record documents the District wants this Court to examine. *See* Ex. 1 (H’rg Tr., *District of Columbia v. Facebook, Inc.*, No. 2018 CA 008715 B (D.C. Super. Ct. Mar. 22, 2019)) at 13:16-14:3 (“[T]he date range of the document [the District] submit[s] is from September 2015 through . . . a little bit into 2016, but, in fact, the conduct that’s being alleged as causing the harm in this case took place from 2013 to May of 2015” (referencing Compl. ¶¶ 29-30)); *id.* at 49:3-6 (“Data scraping, respectfully, is not what this case is about. You won’t find the phrase data scraping in the complaint. This was a separate incident that does not relate to the allegations of the complaint.”).

The District’s filing goes on to rehash several other arguments the District has already advanced to this Court or had ample opportunity to raise previously in opposing Facebook’s motion to dismiss. In the interest of correcting the record, Facebook provides brief responses to those arguments:

*First*, Facebook’s position that a plaintiff must *plead* facts supporting personal jurisdiction is supported by Supreme Court precedent, case law from around the country, and the very treatise (Wright & Miller) on which the District relies. *See* Facebook Reply In Further Supp. of Facebook, Inc.’s Mot. to Seal at 1-3 & n.1 (Mar. 21, 2019) (collecting cases).

*Second*, Facebook accurately explained that the Ninth Circuit’s decision in *Smith v. Facebook, Inc.*, 745 F. App’x 8 (9th Cir. 2018), affirmed the dismissal of a consumer protection suit based on the clarity of Facebook’s Statements of Rights and Responsibilities and the Data Use Policy—the “‘exact same contracts’ at issue here.” District Praecipe at 3. The fact that *Smith* involved different provisions *within* those contracts than those at issue here does not undermine Facebook’s point—and Facebook has not hidden that fact from this Court. Ex. 1 (H’rg Tr.) at 20:18-23 (“In [*Smith*] it was slightly different practices at issue, but [the] same general contract, the Statement of Rights and Responsibilities, the data use policy, the same contracts that are at issue here, and [the Ninth Circuit] held that the case should be dismissed because knowing authorization of the practice constitutes plaintiff’s consent.”).

*Third*, as undersigned counsel accurately stated at the motion to dismiss hearing, Judge Chhabria “expressed numerous times in argument that there is no problem with the – with a state law enforcement action taking place in an MDL.” District Praecipe at 3; *see, e.g.*, Ex. 2 (Tr., *In re Facebook, Inc. Consumer Privacy User Litig.*, No. 3:18-md-02483 (N.D. Cal. Dec. 6, 2018)) at 47:11-13 (Judge Chhabria noting other MDL proceedings in which “there were some State Attorney General actions”). Indeed, the federal Judicial Panel on Multidistrict Litigation explained *in the same case* that it “*routinely transfers* actions brought by states which enjoy certain sovereign defenses in our federal system,” and including state enforcement actions in an MDL is appropriate because “transfer of a particular action often is necessary to further the expeditious resolution of the litigation taken as a whole.” *See* Ex. 3 (Transfer Order, *In re: Facebook, Inc., Consumer Privacy User Profile Litig.*, MDL No. 2843, ECF No. 165 (Oct. 5, 2018)) at 1-2 (emphasis added). Judge Chhabria remanded the Illinois action for lack of subject-matter jurisdiction, not because state enforcement actions must proceed independently of a related MDL. *In re Facebook, Inc., Consumer Privacy User Profile Litig.*, 354 F. Supp. 3d 1122, 1136 (N.D. Cal. 2019) (“Illinois is the real party in interest for diversity purposes, which means there is no diversity jurisdiction and the action must be remanded . . .”).

\* \* \*

The District’s aggressive and unfounded reputational attacks in response to a one-paragraph notice of supplemental authority are a transparent attempt to distract this Court from the glaring lack of factual allegations to support the District’s legal claims and theories. The law is clear—the Complaint should be dismissed.

Dated: April 5, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of April, 2019, I caused a copy of the foregoing to be served upon all counsel of record via CaseFileXpress.

Dated: April 5, 2019

Respectfully submitted,

/s/ Joshua S. Lipshutz  
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